

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Rolando Vasquez	Team: Squad #8	CCRB Case #: 201602020	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 02/18/2016 7:30 PM	Location of Incident: Fountain Avenue and Dumont Avenue; 75th Precinct stationhouse	Precinct: 75	18 Mo. SOL 8/18/2017	EO SOL 8/18/2017	
Date/Time CV Reported Thu, 03/10/2016 4:45 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 03/10/2016 4:45 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Michael Seiger	16689	952225	075 PCT
2. SGT Henry Daverin	03631	945645	075 PCT
3. POM Tony Cuoco	17359	950261	075 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Henry Daverin	Abuse: At Fountain Avenue and Dumont Avenue in Brooklyn, Sergeant Henry Daverin stopped the vehicle in which § 87(2)(b) was an occupant.	
B.POM Michael Seiger	Abuse: At Fountain Avenue and Dumont Avenue in Brooklyn, Police Officer Michael Seiger stopped the vehicle in which § 87(2)(b) was an occupant.	
C.POM Tony Cuoco	Abuse: At Fountain Avenue and Dumont Avenue in Brooklyn, Police Officer Tony Cuoco stopped the vehicle in which § 87(2)(b) was an occupant.	
D.POM Michael Seiger	Abuse: At Fountain Avenue and Dumont Avenue in Brooklyn, Police Officer Michael Seiger frisked § 87(2)(b)	
E.SGT Henry Daverin	Abuse: At Fountain Avenue and Dumont Avenue in Brooklyn, Sergeant Henry Daverin searched the vehicle in which § 87(2)(b) was an occupant.	
F.SGT Henry Daverin	Abuse: At the 75th Precinct stationhouse, Sergeant Henry Daverin threatened to arrest § 87(2)(b)	

### Case Summary

§ 87(2)(b) filed this complaint on March 10, 2016 with the CCRB via phone.

On February 18, 2016, at approximately 7:30 p.m., § 87(2)(b) was driving in the vicinity of Fountain Avenue and Dumont Avenue in Brooklyn. § 87(2)(b)'s vehicle was stopped by Sgt. Henry Daverin, PO Michael Seiger, and PO Tony Cuoco from the 75<sup>th</sup> Precinct Anti-Crime team (**Allegation A, Allegation B, Allegation C**). § 87(2)(b) was removed from his vehicle. Upon exiting, PO Seiger frisked § 87(2)(b) (**Allegation D**). § 87(2)(b) was placed in the backseat of the police car. Sgt. Daverin allegedly searched § 87(2)(b)'s vehicle (**Allegation E**). § 87(2)(b) was detained for possession of a knife and brought to the 75<sup>th</sup> Precinct stationhouse to be processed. At the stationhouse, Sgt. Daverin allegedly threatened to arrest § 87(2)(b) during a debriefing session (**Allegation F**). § 87(2)(b) was released from the stationhouse with a criminal court summons for § 87(2)(b), § 87(2)(a) 160.50. There is no video that captured this incident.

### Mediation, Civil and Criminal Histories

- This case was suitable for mediation and it was offered to § 87(2)(b) during his interview. § 87(2)(b) chose to have his complaint investigated § 87(2)(b).
- The NYC Office of the Comptroller responded to a request on April 19, 2016 indicating that no notice of claim has been filed by § 87(2)(b) in regards to this incident (Board Review 01).
- § 87(2)(b)

### Civilian and Officer CCRB Histories

- This is the first complaint filed by § 87(2)(b) with the CCRB (Board Review 03).
- Sgt. Daverin has been a member of the service for eight years. Sgt. Daverin has three substantiated allegations in CCRB case 201502623 for authorizing a vehicle search, frisk, and refusal to provide his name. The Board recommended a command discipline A for these allegations. The NYPD has not made a ruling on this case. Sgt. Daverin has 31 other allegations involving 13 complaints. These allegations include twelve open allegations in four CCRB cases. § 87(2)(g)
- § 87(2)(b) (Board Review 04).
- PO Seiger has been a member of the service for four years and has no substantiated allegations. PO Seiger has two prior allegations involving two cases. § 87(2)(g) PO Seiger has one open allegation in CCRB case 201509246 (Board Review 05).
- PO Cuoco has been a member of the service for four years and has no substantiated allegations. PO Cuoco has one prior allegation in CCRB case 201507017 § 87(2)(g)

## **Findings and Recommendations**

### **Explanation of Subject Officer Identification**

During his interview, § 87(2)(b) testified that a blonde officer frisked him and handed him his summons. PO Seiger issued § 87(2)(b) a summons and has light brown hair. PO Cuoco and Sgt. Daverin each have dark brown hair. PO Seiger and PO Cuoco each testified that they frisked § 87(2)(b) § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b) referred to an officer as the “mustached officer” who he alleged approached his vehicle on the passenger side, gave the other officers instruction to remove him from his car, searched his vehicle, and drove his vehicle to the stationhouse (Board Review 06). Sgt. Daverin and PO Cuoco testified that it was Sgt. Daverin who approached on the passenger side and gave instruction to remove § 87(2)(b) from the car (Board Review 07, Board Review 08). Sgt. Daverin testified that he transported the vehicle to the stationhouse. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b) testified that the shortest officer and a blonde officer were involved in his debriefing at the stationhouse. Sgt. Daverin is 5’10” tall, PO Seiger is 6’2” tall, and PO Cuoco is 6’0” tall. Sgt. Daverin, PO Seiger, and PO Cuoco all testified that they were involved in the debriefing of § 87(2)(b) § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

### **Potential Issues**

§ 87(2)(b) sold his car and was unable to provide any photographs of the vehicle.

**Allegation A – Abuse of Authority: At Fountain Avenue and Dumont Avenue in Brooklyn, Sergeant Henry Daverin stopped the vehicle in which § 87(2)(b) was an occupant.**

**Allegation B – Abuse of Authority: At Fountain Avenue and Dumont Avenue in Brooklyn, Police Officer Michael Seiger stopped the vehicle in which § 87(2)(b) was an occupant.**

**Allegation C – Abuse of Authority: At Fountain Avenue and Dumont Avenue in Brooklyn, Police Officer Tony Cuoco stopped the vehicle in which § 87(2)(b) was an occupant.**

**Allegation D – Abuse of Authority: At Fountain Avenue and Dumont Avenue in Brooklyn, Police Officer Michael Seiger frisked § 87(2)(b)**

**Allegation E – Abuse of Authority: At Fountain Avenue and Dumont Avenue in Brooklyn, Sergeant Henry Daverin searched the vehicle in which § 87(2)(b) was an occupant.**

**Allegation F – Abuse of Authority: At the 75<sup>th</sup> Precinct stationhouse, Sergeant Henry Daverin threatened to arrest § 87(2)(b)**

§ 87(2)(b) testified that he was driving to a friend’s house in the vicinity of Fountain Avenue and Dumont Avenue in Brooklyn (Board Review 06). § 87(2)(b) was driving a 2008 Porsche Cayenne. § 87(2)(b) was unable to provide any photographs of his car to the CCRB. The rear windshield on § 87(2)(b)’s vehicle has factory tinted glass but the other windows are not tinted at all. § 87(2)(b) was pulled over by an unmarked police car. PO Seiger approached § 87(2)(b)’s vehicle, asked him to roll down his windows, and asked him to provide his license

and registration. § 87(2)(b) reached for his registration which he stores above his visor. As soon as he did this, Sgt. Daverin said, "Take him out of the car." § 87(2)(b) asked why he was being taken out of the car and was offered no explanation. § 87(2)(b) exited his vehicle, was handcuffed, and was frisked by PO Seiger. § 87(2)(b) was placed in the back of the police car. Sgt. Daverin entered § 87(2)(b)'s car through the driver's side door and was bent over inside the car for approximately two minutes. Sgt. Daverin said, "Let's do this back at the precinct." Sgt. Daverin drove § 87(2)(b)'s car to the stationhouse. § 87(2)(b) was brought to the stationhouse in the police car. At the stationhouse, § 87(2)(b)'s pockets were searched and he was found with a pocket knife in his back pant pocket. § 87(2)(b) works as a Verizon technician and uses this knife for cutting cables. § 87(2)(b) was brought to a room and was asked questions about guns and shootings. § 87(2)(b) did not know anything about these matters. Sgt. Daverin said, "You gotta know something. You gotta know somebody. Make it easier on yourself. Help yourself. You can get out of this easily. If you tell us what we need to know we'll let you go." § 87(2)(b) continued to assert that he did not know anything. § 87(2)(b) was released from the stationhouse with a summons for § 87(2)(b), § 87(2)(a) 160.50.

Sgt. Daverin, PO Seiger, and PO Cuoco offered the following consistent testimony about the incident (Board Review 07-09). § 87(2)(g)

While on patrol, the officers observed that the passenger door windows and the rear windshield on § 87(2)(b)'s vehicle were excessively tinted. The vehicle was stopped. The officers approached the vehicle. Sgt. Daverin observed an object he believed was a knife clipped to § 87(2)(b)'s pant pocket. Sgt. Daverin instructed PO Seiger and PO Cuoco to remove § 87(2)(b) from his vehicle. Once outside the vehicle, the other officers also identified the object as a knife based on their training and experience and removed it from § 87(2)(b)'s pocket. § 87(2)(b) was handcuffed and placed in the back of the police car. § 87(2)(b) was transported to the stationhouse to be processed for the possession of the knife. § 87(2)(b)'s car was transported to the stationhouse. At the stationhouse, § 87(2)(b) was debriefed. The anti-crime team debriefs all prisoners that are brought to the stationhouse to determine whether they have information about other crimes. The debriefing produced negative results. No officer threatened to arrest § 87(2)(b) during this debriefing as a means of obtaining information from him. No officer promised to release § 87(2)(b) if he provided them information. § 87(2)(b) was released from the stationhouse with a summons for possession of a knife.

Sgt. Daverin testified that he could not tell what § 87(2)(b) was doing as he approached the vehicle because the tinted windows obstructed his ability to see inside which raised his suspicions (Board Review 07). PO Cuoco instructed § 87(2)(b) to lower his windows. As soon as § 87(2)(b) lowered his windows, Sgt. Daverin saw a knife clipped to § 87(2)(b)'s pocket and instructed his officers to remove him from the vehicle. § 87(2)(b) was not immediately compliant in exiting the vehicle but eventually complied. § 87(2)(b) was handcuffed and Sgt. Daverin explained to him that he was being placed under arrest for possession of the knife and was being taken to the stationhouse for processing. § 87(2)(b) was not processed at the incident location due to his non-complaint demeanor, Sgt. Daverin's mobile phone which he uses to check warrants was not working, and the area is a high crime location. Sgt. Daverin transported § 87(2)(b)'s vehicle to the stationhouse because the vehicle could not be left double parked in the street. Sgt. Daverin searched the area on top of the driver's seat for his safety. Sgt. Daverin did not open any closed compartments. Nobody besides Sgt. Daverin entered § 87(2)(b)'s vehicle. No additional search of the vehicle was conducted at the stationhouse.

PO Seiger testified that § 87(2)(b) was not making any furtive movements or movements of any kind as he approached the stopped vehicle (Board Review 09). Nothing raised PO Seiger's suspicions as he approached the vehicle. One of his partners indicated to PO Seiger that § 87(2)(b) had a knife. PO Seiger asked § 87(2)(b) to exit the vehicle. § 87(2)(b) was compliant in exiting and throughout this entire interaction. PO Seiger saw the knife in § 87(2)(b)'s right front pant pocket. PO Seiger removed the knife from § 87(2)(b)'s pocket and handcuffed him. PO Seiger brought § 87(2)(b) to the police car and frisked him before placing him inside. PO Seiger frisked § 87(2)(b) per NYPD procedure regarding the transport of prisoners. § 87(2)(b) was not processed at the incident location because the department phones that run warrant checks do not work well in the vicinity of the incident location, there was a radio run occurring which would have added additional delay to conducting a mobile warrant check, and the stationhouse was nearby. PO Seiger did not recall any search being conducted of the vehicle. PO Seiger issued § 87(2)(b) a summons for possession of the knife. PO Seiger warned and admonished § 87(2)(b) in regards to the window tints on his vehicle.

PO Cuoco testified that nothing about § 87(2)(b) or his vehicle raised his suspicions that he was involved in any crime besides having excessive window tints (Board Review 08). Sgt. Daverin instructed PO Cuoco to remove § 87(2)(b) from his vehicle. PO Cuoco saw a knife sticking out of § 87(2)(b)'s pocket after he exited his vehicle. PO Cuoco removed the knife from § 87(2)(b)'s pocket. Because he had just been found with a knife, PO Cuoco frisked § 87(2)(b) to ensure that he did not have any additional contraband on him. PO Cuoco searched § 87(2)(b)'s vehicle to ensure that he had not tossed anything in the reachable lunge-able area. PO Cuoco searched the area around the driver's seat, center console, and glove compartment.

Patrol Guide 212-11 states that an officer may conduct a frisk "if you reasonably believe that you or others are in danger of physical injury" (Board Review 10) Patrol Guide 208-05 states that a frisk of an arrested individual shall be performed primarily to maximize security and minimize potential hazards to the arresting officer, the arrested, person, and other Department personnel immediately after apprehension to find weapons, evidence, or contraband (Board Review 11).

People v. Dickens, 218 AD 2d 584 (1995) states officers are permitted to search a vehicle when they are responsible for transporting it (Board Review 12). People v. Galak, 81 NY 2d 463 (1993) states officers must possess probable cause to believe that a vehicle contains evidence or contraband to search a vehicle whose operator is arrested (Board Review 13). Patrol Guide 218-13 concerns inventory searches of vehicles that come into NYPD custody and outlines in great detail the areas of the vehicle which are to be searched and procedures which must be followed (Board Review 14).

Patrol Guide 210-18 states all prisoners in custody and all new arrestees must be debriefed by a member of the service such as an anti-crime supervisor (Board Review 15).

§ 87(2)(g)

§ 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

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Squad: 8

Investigator: \_\_\_\_\_  
Signature Print Date

Squad Leader: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date